

DECISION



21704 Wood 2176
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

118324

FILE: B-205574

DATE: May 6, 1982

MATTER OF: DCG Construction, Ltd.

DIGEST:

1. Evaluation of technical proposals that followed evaluation scheme outlined in solicitation and resulted in lower score for protester has not been shown to have been either arbitrary or unreasonable.
2. The Government is not required to equalize competition by considering competitive advantage accruing to firms due to their particular circumstances, including award of other contracts.

DCG Construction, Ltd. (DCG), protests the Smithsonian Institution's (Smithsonian) award of a negotiated contract to Roubin & Janeiro, Inc. (Roubin & Janeiro), apparently with Federal funds rather than trust funds, for the furnishing of impression molds of stones on the facade of the Renwick Gallery. DCG contends that the award offends the basic policy set forth at 41 C.F.R. § 1-3.801-1 (1980) that property and services should be procured at prices calculated to result in the lowest overall cost to the Government. DCG also contends that it was at a competitive disadvantage.

We conclude that the Smithsonian's decision to award the contract to an offeror whose price was not the lowest was consistent with applicable regulations and with the evaluation and award criteria set forth in the solicitation. The decision was neither arbitrary nor unreasonable. We further conclude that a case of unfair competitive advantage has not been shown. The protest is denied.

Solicitation No. FN-107028 was issued for the fabrication and delivery of cast-ready molds which would later be used in casting architectural cast stones. After receiving three offers for this project,

the Smithsonian learned that some concrete casting companies prefer to prepare their own casting molds rather than work with casting molds prepared by others. In order not to limit the number of companies that might bid on the later contract to cast the stones, the Smithsonian decided to postpone procurement of cast-ready molds and to procure at this time only the impression molds and plaster models. A request for best and final offers incorporating this change was issued.

Three proposals were received in response to the request for best and final offers. DCG's price was \$725,000, that of Roubin & Janeiro was \$998,766, and that of the third offeror was \$2,315,000. The three proposals were evaluated and the contract was awarded to Roubin & Janeiro. DCG protested to the Smithsonian. To our knowledge, the Smithsonian has not formally disposed of that protest. On November 20, 1981, DCG protested the award to this Office.

DCG raises a number of arguments in opposition to the award to Roubin & Janeiro. Its arguments can be distilled, however, into two basic grounds of protest. First, DCG points to the basic policy set forth at 41 C.F.R. § 1-3.801-1 that property and services be procured at the lowest overall cost to the Government. DCG contends that because it offered the lowest price and its proposal was competitive on other factors, it should have been awarded the contract. Second, DCG believes that Roubin & Janeiro was given a competitive advantage because it had made the drawings that accompanied the solicitation. We conclude that both grounds of protest are without merit.

The scope of our review of this protest is narrow because it is the position of this Office that procuring agencies are vested with a reasonable range of discretion in the technical evaluation of the relative merits of competing proposals. General Devices, Inc., B-203711, November 23, 1981, 81-2 CPD 417; First Ann Arbor Corp., B-194519, March 4, 1980, 80-1 CPD 170. Agency evaluations will not be questioned unless clearly arbitrary, unreasonable or in violation of procurement statutes and regulations. Id.

The protester correctly notes the basic policy of the Federal Procurement Regulations (FPR), as stated at 41 C.F.R. § 1-3.801-1 (1980). But cost is not the only factor that must be considered. The regulations provide that, in the course of negotiations, due attention must also be given to other important considerations, 41 C.F.R. § 1-3.102(b)-(q) (1980).

The solicitation issued by the Smithsonian stated that proposals would be evaluated according to seven criteria designed to reflect the factors that it was required by regulation to consider. Each criterion had been assigned a certain number of points on a 100-point scale according to its relative importance to the requirements of the project. The offeror with the highest score would be most favorably considered for the award. The criteria and assigned weights were as follows:

<u>Criterion</u>	<u>Points</u>
1. Experience in projects of a similar nature	20
2. Organization	20
3. Project superintendence	15
4. Special work and trades	15
5. General information	5
6. Cost	15
7. Financial capabilities	10

The three proposals were each evaluated by a four-member panel consisting of the Director of the Smithsonian's Office of Design and Construction, the Director of the Renwick Gallery, a Smithsonian staff architect, and an independent expert in concrete technology. Each panel member reviewed the proposals independently. A review of the evaluation reports shows that Roubin & Janeiro scored substantially higher than DCG on two criteria, experience and organization for the project. On four

other criteria, the two proposals received almost identical scores with only a slight edge to Roubin & Janeiro. Only one criterion--cost--was scored heavily in favor of DCG. Roubin & Janeiro received an average score from the four evaluators of 91.2. DCG's average score was 76.2.

The agency report to this Office articulates several reasons why DCG did not receive higher scores from the panel despite its offer to complete the project at a lower cost. First, the panel received negative reports from some of the references submitted by DCG. Second, it was thought that the DCG plan to enhance each stone in place would produce excessive manipulation of the building and promote further deterioration by permitting further water seepage between the stones. Finally, DCG's suggestion that the project could be completed within 1 year if it were allowed to scaffold the entire building evidenced a failure to contemplate the potential security problems that such a plan might create for adjacent buildings near the White House. These reasons fully support and explain the point differential between the DCG and Roubin & Janeiro proposals and negate any suggestion that the evaluation process was either arbitrary or unreasonable. We conclude that the award to Roubin & Janeiro resulted from the exercise of reasonable judgment by the evaluation panel consistent with the requirements of the FPR and with the procedures and criteria set forth in the solicitation. Cf. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285.

In its protest filed with this Office, and in subsequent comments on the agency report, DCG has offered a number of reasons why its proposal was superior to either of the other two received. We repeat that it is not our function to evaluate proposals in order to determine which should have been selected for award and we will not substitute our judgment for that of the procuring agency by making an independent evaluation. Panuzio/Rees Associates, B-197516, November 26, 1980, 80-2 CPD 395.

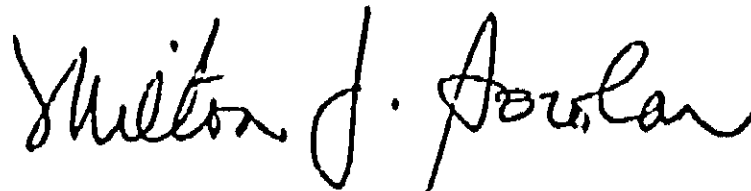
The second theory upon which this protest is based is that Roubin & Janeiro was given a competitive advantage because it had been awarded the contract to

prepare the drawings that accompanied the solicitation. This ground of protest is dismissed based on Communications Corps Incorporated, B-195778, February 20, 1980, 80-1 CPD 143:

"We have consistently stated that the Government is not required to equalize competition on a particular procurement by considering the competitive advantages accruing to firms due to their particular circumstances, including the award of other contracts. Although a competitive advantage may well exist, the test of propriety or legality of an award is whether that advantage was the result of unfair action by the Government. See National Motors Corporation, B-189933, June 7, 1978, 78-1 CPD 416."

The protest by DCG points to no fact or circumstance that would support a finding that an advantage accrued to Roubin & Janeiro as a result of unfair action by the Government.

The protest is denied.



Acting Comptroller General
of the United States